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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellant, v. JOHN ANTHONY MATUS, Appellee.	2 CA-CR 2010-0158 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20092536002

Honorable Christopher C. Browning, Judge

AFFIRMED

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By Rebecca A. McLean
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H O W A R D, Chief Judge.

¶1 Appellant State of Arizona appeals from the trial court's ruling suppressing the evidence obtained following the arrest of appellee John Matus. *See* A.R.S. § 13-4032(6). The state argues the court erred in concluding the officer who arrested Matus had lacked probable cause to do so. Because the trial court did not err, we affirm.

Factual and Procedural Background

¶2 "In reviewing the grant of a motion to suppress, we view the evidence presented at the evidentiary hearing and any reasonable inferences from that evidence, in the light most favorable to upholding the trial court's order." *State v. Garcia-Navarro*, 224 Ariz. 38, ¶ 2, 226 P.3d 407, 408 (App. 2010). And we review only the evidence presented at the suppression hearing. *State v. Newell*, 212 Ariz. 389, ¶ 22, 132 P.3d 833, 840 (2006).

¶3 A sheriff's deputy watching a house noticed a young man on a bike surveying the neighborhood with a monocular. The deputy later saw the same young man in the backyard of the house looking into a shed. There were people walking between the house and the shed, sometimes carrying objects, and a man matching Matus's description entered the shed and returned to the house with a rectangular package wrapped in plastic. Several vehicles drove up to the house and then left after a short time. One car that left the house was stopped by law enforcement officers shortly thereafter, but they found no contraband in the car. They stopped a second car and found a small amount of marijuana inside. A third car, later determined to have been driven by Matus, left the house and drove to a gas station. Matus parked the car at one pump and

then another without getting gas. He then went to a nearby store and drove in circles around the parking lot while talking on his cell phone. He parked briefly but quickly backed out. When Matus then saw a marked patrol car enter the lot, he changed directions abruptly and parked his car again. As an Arizona Department of Public Safety officer pulled up behind him in an unmarked car, Matus exited his car. The officer walked up to Matus, asked him a few questions, and saw an object wrapped in black plastic on the back seat. He then arrested Matus.

¶4 Matus was charged with transportation of marijuana for sale, a class two felony. He later filed a motion to suppress all evidence seized, asserting there had been no probable cause for his arrest. The trial court found that the state had failed to identify anything specific seen at the residence that showed marijuana trafficking had been taking place—the officers had not seen any objects from the shed being put into the vehicles, the first vehicle searched had not contained any contraband, Matus's driving had been "suspicious at best," and the police had no indication the black plastic object in Matus's vehicle contained anything illegal. The court then granted Matus's motion to suppress, and the state filed this appeal.

Discussion

¶5 The state argues the trial court erred in granting Matus's motion to suppress because there was probable cause to support the arrest under a totality of the circumstances analysis, which the court failed to employ. "We review rulings on motions to suppress evidence for a clear abuse of discretion." *State v. Sanchez*, 200 Ariz. 163,

¶ 5, 24 P.3d 610, 612 (App. 2001). However, we review de novo the court's legal conclusions, such as whether probable cause existed. *See id.*

¶6 We first examine whether the trial court used the appropriate standard to determine whether probable cause existed. The court must consider whether there is probable cause under the totality of the circumstances. *State v. Lawson*, 144 Ariz. 547, 553, 698 P.2d 1266, 1272 (1985). And to determine the totality of the circumstances "one must look at all of the factors . . . and examine them collectively." *State v. O'Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d 325, 327 (2000). The court here considered individual factors including the opinions of officers based on their experience, the shape of the object wrapped in plastic, Matus's driving patterns, the activities observed at the house, the stops of other vehicles leaving the house, and Matus's presence at the house. It then determined that "[t]aken in its entirety, the evidence and circumstances known to police at the time of arrest would not lead a reasonable person to believe that [Matus] had committed a crime." Thus, contrary to the state's assertion, the court properly examined the totality of the circumstances by looking to the individual factors and then considering them collectively in reaching a conclusion. *See id.*

¶7 The state further contends the trial court erred in finding that the totality of the circumstances had not provided probable cause to arrest Matus. We defer to the court's findings of fact, *State v. Lopez*, 198 Ariz. 420, ¶ 7, 10 P.3d 1207, 1208 (App. 2000), including its findings on officer credibility and the reasonableness of their inferences, *State v. Mendoza-Ruiz*, 225 Ariz. 473, ¶ 6, 240 P.3d 1235, 1237 (App. 2010). Probable cause must be "sufficient to justify a reasonable and prudent person in believing

that a felony has been committed by the individual arrested." *State v. Valle*, 196 Ariz. 324, ¶ 21, 996 P.2d 125, 131 (App. 2000).

¶8 The trial court determined that no evidence showed criminal activity had been observed to occur at the house where Matus was seen and that the only relevant activity at the house was individuals walking to and from the shed, sometimes carrying objects wrapped in plastic. It also determined there was no evidence of anyone placing an object from the shed in Matus's car or otherwise connecting Matus to any criminal activity and that the first car leaving the house, which officers had stopped, contained no drugs. The court also rejected the arresting officer's inference that the plastic object in Matus's vehicle appeared to be a bale of marijuana. *See Mendoza-Ruiz*, 225 Ariz. 473, ¶ 6, 240 P.3d at 1237. However, the court did conclude that Matus's driving upon leaving the house and change of direction upon encountering a patrol vehicle was "suspicious at best."

¶9 Deferring to the trial court's determinations of fact and the reasonable inferences from those facts, the totality of the evidence against Matus was his presence at a house where people came and went from a shed carrying unknown objects and where an individual using a monocular looked into the shed, Matus's suspicious driving and possession of a rectangular object wrapped in plastic. Matus was arrested outside of his vehicle, and no evidence suggests that anyone smelled marijuana prior to his arrest. Although this evidence could reach the level of reasonable suspicion despite each of the factors individually "hav[ing] a potentially innocent explanation," *O'Meara*, 198 Ariz. 294, ¶ 10, 9 P.3d at 327, we cannot conclude that this evidence was "sufficient to justify a

reasonable and prudent person in believing that a felony has been committed by the individual arrested." *See Valle*, 196 Ariz. 324, ¶ 21, 996 P.2d at 131; *cf. People v. Voner*, 904 N.Y.S.2d 225, 226-28 (N.Y. App. Div. 2010) (no probable cause when tip by confidential informant, officer sees transfer of black plastic bags, sees inside of bag inconclusively). The trial court reasonably found from the totality of the circumstances that officers did not have probable cause to arrest Matus.

Conclusion

¶10 In light of the foregoing, we affirm the trial court's ruling.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge